

November 4, 1955

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CONCORD, N.H.

Ray E. Tarbox, Commissioner
State Liquor Commission
109 North Main Street
Concord, New Hampshire

Dear Sir:

Along with a letter dated November 2, 1955, you handed me a bottle containing a liquid which purports by its label to be Holland House Daiquiri Mix. Attached to the bottle is a small printed pamphlet. The label shows that the bottle is distributed by Holland House Sales Co., and that the contents are non-alcoholic.

The pamphlet is entitled "It's Smart to be a Good Mixer." On its inside cover and label the booklet describes and recommends a number of Holland House products - none of which according to my understanding is alcoholic in content. Holland House products are further described in text. The larger part of the pamphlet is devoted to recipes. These describe how each of certain mixed drinks or cocktails may be made by the addition of a Holland House product and other specified non-alcoholic ingredients to "dry gin," "rye or bourbon whiskey" or "brandy." No particular brand of these alcoholic products is suggested; indeed the booklet notes that the individual may use his own favorite brand of liquor.

Your inquiry is whether the booklet described violates any law, rule or regulation. I understand that particular reference is had to RSA 175:10 relative to the advertising of liquor or beverages and to the Advertising Regulations of the Commission based thereon. The question resolves itself into whether or not the pamphlet with its references to certain alcoholic products constitutes the advertising of liquor or beverages within the meaning of the statute cited. Our opinion is that it does not.

In its broadest meaning the word advertise refers to the drawing or turning of one's attention to a certain thing. In the common understanding of the world of business and trade the meaning is somewhat more restricted. Webster defines its sense as

" . . . to call public attention to, esp. by emphasizing desirable qualities, in order to arouse a desire to purchase, invest, patronize, or the like." (New Int. Dic., 2d Ed., Unab., p. 39).

Another authority states:

" 'Advertising' means more than merely announcing, making known, or turning the attention of the public toward a certain product. Its ultimate purpose is to sell or to help sell, and is one of the methods employed in the marketing of goods. State v. Guardian Foundation, 128 S.W. 2d 880, 882.

In the words of the Supreme Court of the United States

"Advertising is merely identification and description, apprising of quality and place. It has no other object than to draw attention to the article to be sold and the acquisition of the article to be sold constitutes the only inducement to its purchase. The matter is simple, single in purpose and motive; its consequences are well defined, there being nothing ulterior; it is the practice of old and familiar transactions and has sufficed for their success." Rast v. Co., 240 U.S. 342, 365.

Since the statute under consideration is directed generally to the purveying of liquors and beverages, it is reasonable that the language of section 10 be construed as used in the business sense.

It seems very clear that the purpose of the pamphlet is to bring about the sale of Holland House products. This in itself may have secondary affects which may increase the quantity of alcoholic products consumed. Such secondary affects do not, however, constitute the booklet as advertising alcoholic products. The booklet does not advertise liquor or beverages within the prohibition of section 10.

Ray E. Tarbox

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Therefore, neither that section nor the rules and regulations based thereon are applicable.

I know of no other laws, rules or regulations pertinent to the question.

The bottle and its contents are returned.

Very truly yours,

Warren E. Waters
Deputy Attorney General

WEW/aml